

March 24, 1997

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Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW, Room 222  
Washington, DC 20554

Dear Mr. Caton:

Re: CC Docket No. 96-152, *Telemessaging, Electronic Publishing, and Alarm Monitoring Services*

On behalf of Pacific Telesis Group, please find enclosed an original and six copies of its "*Petition for Reconsideration or Clarification*" in the above proceeding.

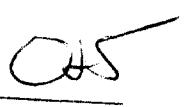
Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Implementation of the )  
Telecommunications Act of 1996: )

Telemessaging, )  
Electronic Publishing, and )  
Alarm Monitoring Services )  
\_\_\_\_\_ )

CC Docket No. 96-152

**PETITION FOR RECONSIDERATION OR CLARIFICATION OF**  
**PACIFIC TELESIS GROUP**

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Date: March 24, 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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| Telecommunications Act of 1996: | ) |                      |
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| Telemessaging,                  | ) |                      |
| Electronic Publishing, and      | ) |                      |
| Alarm Monitoring Services       | ) |                      |
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**PETITION FOR RECONSIDERATION OR CLARIFICATION OF  
PACIFIC TELESIS GROUP**

Pacific Telesis Group ("Pacific") hereby petitions for clarification of a single aspect of the First Report and Order and Further Notice of Proposed Rulemaking in this docket ("Order").<sup>1</sup> This request for clarification relates to the application of the restrictions of §274(c)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act").<sup>2</sup>

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<sup>1</sup> Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring Services, CC Dkt No. 96-152, First Report and Order and Further Notice of Proposed Rulemaking, FCC 97-35, released Feb. 7, 1997.

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996)(codified at 47 U.S.C. §§151 et seq. (1996)).

I. **THE RESTRICTIONS OF §274(C)(1) DO NOT APPLY TO A BOC'S PROVISION OF PROMOTION, MARKETING, SALES, AND ADVERTISING FOR ITS OWN ELECTRONIC PUBLISHING SERVICE**

Clarification of the Order is necessary because there is language in ¶¶137 and 139 that appears to be inconsistent with §§274(c)(1)(A) and (B). Those paragraphs conclude that a BOC, or an entity owned or controlled by a BOC, may not advertise local exchange services and electronic publishing services together, may not sell both services through a single point of contact and may not offer bundling discounts on the purchase of both services.<sup>3</sup> Those restrictions are too broad.

A BOC may itself engage in the provision of an electronic publishing service. The Commission correctly concluded that "in reading section 274(a) together with the definition of 'basic telephone service' in section 274(i)(2) . . . a BOC or BOC affiliate is not required to provide electronic publishing services through a separated affiliate or electronic publishing joint venture if it disseminates its electronic publishing via the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service provider. We find that dissemination via the basic telephone service of competing, unaffiliated providers significantly reduces the ability of the BOC to allocate costs improperly and to discriminate in favor of its affiliate. We therefore decline to apply the requirement that a BOC provide electronic publishing services through a separated affiliate or

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<sup>3</sup> The Commission stated that a bundling discount also violates §274(a), as well as §§274(c)(1)(A) and (B). However, it would violate §274(a) only if the electronic publishing service is disseminated by means of the BOC's, or a BOC affiliate's, basic telephone service.

electronic publishing joint venture where Congress did not.” (Order, ¶54) Thus, so long as the electronic publishing is disseminated by a means other than the BOC’s basic telephone service, *e.g.*, by means of the basic telephone service of a competing wireline local exchange carrier or commercial mobile radio service provider, the BOC itself may provide the electronic publishing service.

Section 274(c)(1)(A) prohibits a BOC from carrying out “promotion, marketing, sales, or advertising for or in conjunction with a separated affiliate.” The language is explicit and unambiguous - the BOC is precluded “from engaging in certain activities with a separated affiliate.” (Order, ¶¶126-127) Nothing in §274(c)(1)(A) precludes the BOC from engaging in those activities on its own behalf, even if related to an electronic publishing service provided by the BOC, so long as a §274 separated affiliate is not involved in those activities.

Section 274(c)(1)(B), as interpreted by the Commission, similarly prohibits a BOC from carrying out “promotion, marketing, sales, or advertising for or in conjunction with an affiliate” “if such activities ‘relate to’ the provision of electronic publishing.” (Order, ¶120) A BOC is not prohibited from engaging in such activities related to electronic publishing unless it does so “for or in conjunction with an affiliate.” Thus, if a BOC itself is providing an electronic publishing service, that is disseminated by means of a third party’s basic telephone service, and no affiliate of the BOC is involved, it would be completely consistent with §274(c)(1)(B) for the BOC to promote, market, sell, or advertise its electronic publishing service.

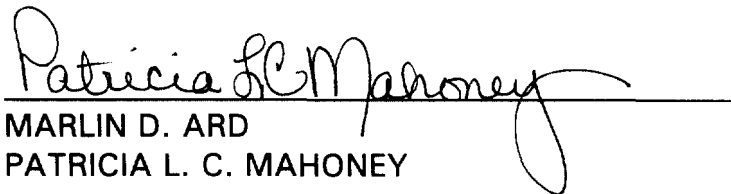
The definition of BOC in §274 also includes entities that are “owned or controlled by” the BOC (§274(i)(10)), and the Commission concluded that the prohibitions of §274(c)(1) also apply to such entities. (Order, ¶136). The scope of the prohibitions that apply to such entities must also be limited as described above. That is, if an entity that is owned or controlled by a BOC engages in the provision of electronic publishing that is not disseminated by means of the BOC’s (or any BOC affiliate’s) basic telephone service, that entity may carry out promotion, marketing, sales, and advertising related to the electronic publishing so long as no separated affiliate or other BOC affiliate is involved in such promotion, marketing, sales, or advertising.

This interpretation of §§274(c)(1)(A) and (B) is straightforward and entirely consistent with the language of the statute. A BOC, or an entity owned or controlled by a BOC, may not, pursuant to §§274(c)(1)(A) and (B), carry out promotion, marketing, sales, or advertising if it does so for or in conjunction with a separated affiliate (§274(c)(1)(A)) or for or in conjunction with an affiliate (§274(c)(1)(B)). However, so long as there is no involvement of a separated or other affiliate, and the BOC, or an entity owned or controlled by the BOC, is properly engaged in electronic publishing service that is not disseminated by means of the BOC’s, (or any BOC affiliate’s) basic telephone service, the prohibitions of §§274(c)(1)(A) and (B) do not apply to the BOC’s, or the entity owned or controlled by the BOC’s, promotion, marketing, sales, and advertising activities.

Since Congress intended to permit BOCs, and entities owned or controlled by BOCs, to engage in electronic publishing under certain circumstances (*i.e.*, when such electronic publishing is disseminated by means of an unaffiliated entity's basic telephone service), there is no sound rationale that would prohibit the promotion, marketing, sales, or advertising of such electronic publishing service by the BOC, or an entity owned or controlled by the BOC. Such a prohibition would render meaningless the authority to provide such electronic publishing service granted by Congress. The Order, especially ¶¶ 137 and 139, should be clarified to impose the § 274(c)(1)(A) and (B) prohibitions only to activities involving a BOC, or entity owned or controlled by a BOC, with an affiliate or a separated affiliate.

Respectfully submitted,

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